IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8923 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B S PATEL - Petitioner(s)

Versus

GUJ. STATE CO.OP HSG. FINANCE SOCIETY LTD & 6 - Respondent(s)

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Appearance :
UNSERVED-EXPIRED (N) for Petitioner(s) : 1,
MR UR GANDHI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,
None for Respondent(s) : 4 - 7.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner - Representative

and President of Ishwarnagar Wadaj Cooperative Housing Society Limited, has prayed for to quash and set aside the orders / action of the respondents in deciding to put the residential premises into auction for the alleged non payment of the loan amount.

2. Though served, nobody appears on behalf of the petitioner.

3. From the records and the pleadings, it appears that the respondents initiated the proceedings to put the residential premises of Ishwarnagar Wadaj Cooperative Housing Society Limited for non payment of alleged loan and initially this court passed an order directing the members to pay an amount of 10% of the dues claimed in the notice/s without prejudice to the rights and contentions and the said order came to be passed on 29-1-1990. Thereafter, on 26th December, 1991, the following order came to be passed by this court.

“Rule returnable in the first week of March 1991. Mr. UR Gandhi, learned Counsel waives service of Rule on behalf of the respondent no.1 and Mr. RP Solanki, learned AGP waives service of Rule on behalf of the respondent no.3 and Mr. Tushar Mehta, learned Counsel waives service of Rule on behalf of the respondent no.4. Rule to be

served directly on respondents Nos.2,5,6 & 7.

Any further Affidavit-in-reply to be filed shall be filed by 30th January, 1992.

Mr. Ajit Padiwal, learned Counsel for the petitioner states that the petitioner are paying installments as per their capacity and they will go on making payment of installments. On such statement being made, respondent no.1 is directed not to resort to any coercive recovery. Mr. UR Gandhi states that respondent no.1 has as such not started any coercive recovery. In view of the aforesaid facts, the direction to the petitioner to make payment of installments will suffice."

4. As per the submissions made by the learned advocate appearing on behalf of the petitioner at that time, the members were required to pay the amount due by installments. This is a petition of 1991 and 14 years have already passed. Therefore, the members must have paid the installments and therefore, the present Special Civil Application is dismissed without entering into the merits of the case and on the basis of the aforesaid order dated 26-12-1991. However, if any amount is still due and payable, it will be open for the concerned respondents to recover the same by serving a notice upon the members of the society in accordance with law and on

merits.

5. With the above observations, petition is disposed of. Rule is discharged. Ad interim relief if any, stands vacated forthwith. However, no order as to costs.

(M.R.SHAH,J)

Shekhar/-